

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAVID LYNN CARPENTER,
Petitioner,

V.

RICK THALER,
Director, Texas Department of
Criminal Justice, Correctional
Institutions Division,
Respondent.

THE UNIVERSITY OF CHICAGO

No. 3:02-CV-1145-B-AH

DEATH PENALTY CASE

STATE OF TEXAS

COUNTY OF DALLAS

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AFFIDAVIT

My name is Rycke Marshall, Ph.D. I am a clinical psychologist with UT Southwestern Medical Center, Dallas, Texas. My office address is 4201 Spring Valley Road, Suite 1100, Dallas, Texas 75244, and my phone number is 972-404-8325.

I interviewed Mande McBay/Cloud on three separate occasions and conducted interviews and psychological testing. The interview was a five-hour session. The test employed was the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), which is a widely used and well-researched psychological test, providing information about current symptoms, long-term functioning, and the manner in which the individual approached the evaluation. In addition to the clinical interview and the psychological testing, the following documents were reviewed:

- David Carpenter's post-conviction application for writ of habeas corpus, pages 5-18;
- Affidavit of Mande McBay Cloud dated November 17, 2008;
- Medical records from Westley E. Raborn, D.O. for Mande McBay Cloud;
- Medical records from Timberlawn Mental Health System for Mande McBay Cloud; and

Records from Social Security Administration for Mande McCay Cloud.

I would request the opportunity to review any additional information which becomes available to incorporate into my findings by means of a supplemental report.

Behavioral Observations:

Mrs. Cloud is a 33-year-old woman of average height, who is somewhat overweight. She has long blonde hair, which she wears pinned up, and she was well groomed and neatly dressed in casual clothes. She was open in responding to my questions, but she indicated she did not have a good memory for dates and some details. This, indeed, appeared to be the case, but she clearly tried her best to provide answers that were as complete as possible. Her demeanor was polite, pleasant, and cooperative. It was clearly difficult for her to talk about the past, and she was periodically tearful and visibly distressed. Her mood was mildly depressed, her affect was blunted, and she had little energy or animation. During the initial interview, she became so distressed that she developed gastrointestinal difficulties and needed to take frequent breaks. I asked if she would like to stop, but she indicated she wanted to continue. On the two subsequent meetings, she seemed more relaxed and did not have this problem. Periodically, Mrs. Cloud would stare into space as she reflected upon the events of her life and her relationship with Mr. Carpenter. It seemed as if she were reliving prior events. She described the time leading up to the trial and the trial itself as being extremely stressful and frightening. Overall, she was quite cooperative with the evaluation, and I regard the results as presenting a valid and reliable picture of her functioning. The results of the MMPI-2 also reflect that she approached the assessment in an open and forthright manner.

History and Background Information:

Mrs. Cloud was born on December 4, 1975. She is the youngest of her mother's three children and has two half siblings: a sister who is 41 and a brother who is 40. Her parents divorced when she was about two years old. She saw her father occasionally after the divorce, but he was not a part of her life as a small child. When she was older, they became closer. Prior to his death from cancer in October 2007, she was with her father daily and took care of him. She reported that her father was an alcoholic and drug addict. He was physically abusive to her siblings, and he sexually abused her sister. If Mrs. Cloud misbehaved, she was locked in a closet. Nevertheless, she loved her father and felt he changed over time. He was clean and sober for the last eight years of his life. Mrs. Cloud also indicated that her mother is a different person now than she was as Mrs. Cloud was growing up. Her mother has been clean, sober and celibate for 13 years. Prior to that time, she was an alcoholic and a drug addict, who had a series of abusive relationships.

Mrs. Cloud's childhood was marked by extreme instability, neglect, and emotional, physical and sexual abuse. There was often no food or electricity in the home, and Mrs. Cloud's mother frequently left Mrs. Cloud at home alone or with other people and would be gone for days. From an early age, she was exposed to drug and alcohol abuse, pornography, "sex parties," and domestic violence. From the time she was about five years old, she recalled drinking beer and smoking marijuana and cigarettes. Her mother and other adults would use drugs in her presence and sometimes involved the children. In her words, "There were no rules at home and no stability." Her sister married at 15 to get away and tried to take Mrs. Cloud with her, but her mother would not allow her to do so. She had no protection from her parents and no guidance. Mrs. Cloud recalls being sexually abused by her stepfather, and being a victim of child pornography at the hands of one of her mother's boyfriends. She was sexually active from the age of 12, getting high, and "dating" older men. She indicated that her mother was aware of this but was apparently too impaired to intervene.

The family moved frequently, and Mrs. Cloud attended a number of different schools. She was often absent, and it was difficult for her to keep up with her studies. She hated school and described feeling awkward, stupid, and very self-conscious. She recognized that her life was very different from most of her peers, and it was difficult for her to fit in. She dropped out of school in the seventh grade but obtained her GED when she was 25.

She had two long-term relationships. The first was with David Carpenter, and the second was with J.C. Cloud. In addition to the two daughters she has with Mr. Carpenter, she has a third daughter who was born in 1997. The girls are now 16, 14, and 12 years old. Since Mr. Cloud's death in 2000, Mrs. Cloud has dated, but has remained single. For the past 13 years, her mother has lived with her and helped her with the children. They currently live in Seagoville, Texas, in a mobile home that belonged to Mrs. Cloud's father.

Mrs. Cloud readily acknowledged she has longstanding psychological problems including, depression; suicidal ideation, anxiety, and polysubstance abuse. These problems began in childhood and have persisted to the present. She was first treated with psychiatric medications for depression and anxiety in 1997, and was eventually diagnosed with Bipolar Disorder and Polysubstance Abuse. From 1997 until approximately 2000, her psychiatric problems were treated by her primary care physician, Dr. Westley Raborn. She then saw a psychiatrist, Dr. Vicky Borek, who diagnosed her with Bipolar Disorder. Subsequently, she saw another female psychiatrist, Dr. Meyer, and since 2004, she has been treated by Dr. John Bennett, a psychiatrist with the Adapt Clinic.

Due to her psychological problems, Mrs. Cloud has worked only sporadically. In 2003, she was unable to work due to her Bipolar Disorder, and in August of 2003, the Social Security Administration declared her disabled and eligible for benefits due to her mental condition. At the same time, the Social Security Administration deemed her unable to handle her own affairs, and her mother was appointed as her legal guardian.

Mrs. Cloud denied any intravenous drug use, but she has periodically abused or been addicted to marijuana, methamphetamines, and crack cocaine. After her father's death, she became addicted to crack cocaine and had suicidal ideation. She sought inpatient treatment at Timberlawn Mental Health System in 2007, and has been clean since that time. She still sees Dr. Bennett regularly and reported that it has taken quite some time to find a medication regimen that works for her. At the time of the evaluation, Ms. Cloud was taking Seroquel, Zoloft, Gavapentin, Klonopin, and Ambien. She has been on a similar regimen of antidepressant, mood stabilizing, antianxiety, antipsychotic, and sleep medication for many years.

History of Relationship with David Carpenter:

Mrs. Cloud met David Carpenter when she was 12 and he was 21. Mr. Carpenter was a friend of her mother, and she and her boyfriend bought drugs from Mr. Carpenter occasionally. Mrs. Cloud developed a crush on him, and they corresponded when he was incarcerated for three years. When Mr. Carpenter was released, he got an apartment with his brother, and in Mrs. Cloud's words, "I pushed my way in." She was 15 when she moved in with him, and their first child was born when she was 16. Their second child was born two years later. Mrs. Cloud stated she loved Mr. Carpenter or was "addicted to him," and felt she had to be with him. Theirs was an intense and stormy relationship, and they separated when their second daughter was six months old because of Mr. Carpenter's infidelity. Soon after, Mr. Carpenter was once again incarcerated, but they continued to write and planned to get back together when he was released.

In describing David Carpenter, Mrs. Cloud said he grew up in an atmosphere of domestic violence, and his father was physically abusive to him and his mother. He abused alcohol and drugs from the time she met him. She sees him as someone who went out of his way to make people like him. He would brag about things that made him feel macho, and "always wanted to be the coolest person." In retrospect, she sees Mr. Carpenter as trying to impress others by being tough and a "big man," who was "bad." She believes that many of his stories were fabricated or exaggerated in order to make him feel important and to gain the respect of others. She also sees him as someone who, as part of his "toughness," would never "snitch" on a friend in order to save himself. Mrs. Cloud indicated she and her father had many conversations about Mr. Carpenter and his alleged involvement in the murder. Her father knew him

well and never believed him to be capable of killing anyone. Mrs. Cloud also has doubts about Mr. Carpenter's involvement in the crime.

While Mr. Carpenter was in prison, Mrs. Cloud began seeing J.C. Cloud in about 1997 or 1998. He was a childhood friend of Mr. Carpenter and was very solicitous toward her. She now had three children and was struggling, and Mr. Cloud helped her and her mother get an apartment. They saw each other off and on for a couple of years and eventually married. They had been married less than a year when Mr. Cloud was killed in a train accident in 2000. Although Mrs. Cloud saw the accident as tragic, she was very ambivalent about her husband. She stated he was not the person she thought he was. Shortly before his death she learned he had molested her eldest daughter. She also described him as very devious, manipulative, and a liar. He was jealous, possessive, and inclined to retaliate when he was angry. For example, on one occasion when they broke up, he set Mrs. Cloud's car on fire. He also found the letters from Mr. Carpenter, and Mrs. Cloud believes her husband may have given the police an anonymous tip. She suspects he told the police Mr. Carpenter was involved in the murder of Nelda Henin as retaliation and to prevent the release of Mr. Carpenter and his reconciliation with Mrs. Cloud.

Mrs. Cloud and David Carpenter have continued to correspond, and he remains in contact with his daughters. Despite the turmoil that characterized their relationship in the past, they are on good terms. Mrs. Cloud also acknowledges her sadness about his being sentenced to death and about the fact that he has serious health problems. She is also very concerned about the impact upon their children if he is executed.

History of Events Surrounding David Carpenter's Trial:

I interviewed Mrs. Cloud at length about the events leading up to Mr. Carpenter's trial and her testimony. She reported she did not remember much about what happened on August 28, 1991. She recalled the date, because it is her mother's birthday. At the time, she was pregnant with her first child, and she and Mr. Carpenter were living in a two-bedroom mobile home with another couple. It was early morning, and she was awakened by Mr. Carpenter. At the time, she thought he had returned from taking one of their roommates to school. Her memory of the events that followed is not clear, but she said Mr. Carpenter woke her up and told her he had killed a woman. She cannot remember his exact words or any conversation that occurred at that time. She does clearly recall there was no blood on Mr. Carpenter's clothes or on his hands. She also remembered he did not get rid of any clothes, nor did he scrub his hands. He reportedly asked her to clean the blood off a knife and his shoes. Mrs. Cloud stated that there were "tiny, tiny specks" on the knife and his shoes that "looked like grape jelly." She indicated she was scared when he told her, but she did not ask any questions and there was no further discussion about what happened. She said Mr. Carpenter told her never to speak about it, and

she maintains she never told anyone, and they never talked about it again. It is important to note that Mrs. Cloud was only 16 years old at the time this allegedly occurred.

Mrs. Cloud recalled that Mr. Carpenter was in a hurry to go to his Aunt Judy's house. When they arrived, family and friends were there and were watching the news on television related to the murder of Nelda Henin. Some of the people knew her and were crying. Mrs. Cloud did not know her, but thinks she made the assumption Ms. Henin was the woman Mr. Carpenter told her about, although he did not give her the name of the person. She described everything as seeming "unreal," and she does not remember anything else that happened on that day.

When questioned about her emotional state during that time, Mrs. Cloud reported that it was early in her first pregnancy, so she was not using drugs or taking any medication. She recalled that things were quite strained between her and Mr. Carpenter, and she was depressed and having mood swings. She also recalled feeling very paranoid. She was afraid of the dark and afraid of being left alone at night. She would check and re-check the locks and was very anxious. She denied ever having hallucinations unless she was on drugs, but she did state that before she was on medication, she would think she heard someone calling her name when she was in the shower, and she would get in and out multiple times.

Years passed with no leads on the crime until 1997. Mrs. Cloud does not remember any of the dates when the police questioned her or when she appeared at trial. She had not seen Mr. Carpenter since 1997, because he was incarcerated, but they had been in contact through letters. In the letters, they spoke of loving each other and of getting back together when he was released from prison. As she recalled, he was due to be released soon when the police first came to talk to her. Initially, they came to see Mrs. Cloud at work about her mother. The police had received an anonymous tip that she knew how to find her mother, who had been evading arrest for many years for a probation violation. Soon after, the police came to see Mrs. Cloud again, on another anonymous tip. This time they had been told she had information about David Carpenter's being involved in a homicide. She told them she did not know what they were talking about. Mrs. Cloud now believes that J.C. Cloud provided the anonymous tips about her mother and Mr. Carpenter to get back at her. He was angry when he found the letters from Mr. Carpenter, and he wanted to make her as dependent upon him as possible. Mrs. Cloud was about 23 years old at this time, and was still quite young and impressionable. She was very frightened when she was approached by the police.

The second time the police came to Mrs. Cloud's house and took her to the police station, she had never been in a jail before, and she was extremely intimidated and afraid. They told her they knew she was lying, and someone had already told them

everything she knew. She was very upset by their allegations, and when she told J.C. Cloud about what happened, he pressured her to tell the police everything, and said the police could take her children away from her. From that point forward, Mrs. Cloud said she never knew when the police were going to come and pick her up. She estimated it happened between 10 to 15 times. It was very disruptive and disturbing to her. She said, "I have never in my life been questioned like that--I had never been to jail. They would go out and leave me sitting in there." She was particularly afraid of a detective named Ken Penrod, and found him especially intimidating. She said, "He would come and pick me up and take me in those rooms, and you would sit forever until you write a statement or they write it, and you sign it." On one occasion she was taken to a different police station where she was fingerprinted and told they needed to rule her out as a murder suspect.

She felt tremendous pressure to provide information and was frequently told she was lying or they were sure she knew more. All the while she believed she might be put in jail or her children might be taken from her. Initially she told the police Mr. Carpenter said he had killed a woman. The police apparently told her there was "one more thing" they were "sure" she knew. She then added that Mr. Carpenter told her to clean the blood off his knife and his shoes. When she told them this, they ceased to pressure her.

Eventually, Mrs. Cloud signed a statement. She was assured if she told the police everything she knew, Mr. Carpenter would not get the death penalty. She said, "They would write and I would sign. Some things I didn't understand. I was very upset by the end and just wanted to get out." After she had given her statement, they told her they planned to seek the death penalty. She felt sick and was unable to breathe.

Mrs. Cloud also apparently had a number of interviews with the prosecutors. She said they were "real nice." They took her out to eat and told her about a famous case they had tried. They practiced her testimony to be sure she was prepared. During the trial, she described how the witnesses for the prosecution all waited in the same room. Although they were not supposed to talk to each other, she said they gossiped about the case openly and the prosecutors were aware of it. An officer who was present to testify commented that if they would "give him the needle" he would "take care of this right now." Mrs. Cloud stated she also saw "a lot of evidence," including photographs, documents, and a letter from Mr. Carpenter. She was aware these things were inappropriate, but she was afraid to say anything.

Throughout this time, Mrs. Cloud was extremely anxious and fearful of getting in trouble. She had become very depressed after the birth of her last child in 1997, and her depression intensified during this time. She found the experience of being constantly interrogated to be very traumatic. She was unable to sleep, emotionally distraught, and felt she was walking on eggshells. She did not want to testify or to

have anything to do with the trial. She told the prosecutors about her psychological state and about being on medication, but said they "did not care."

Ms. Cloud admitted feeling overwhelmed and confused during this time. She cannot seem to resolve the discrepancy in her mind of what Mr. Carpenter allegedly told her, and what she saw at the time. If indeed he had murdered someone with a knife, she believes he would have been covered in blood, which was not the case. She said, "I know what he said, but now I'm confused." She alternately says she is not going to lie about what Mr. Carpenter told her, she is not going to jail, and she does not want to get in trouble.

Results:

Data from the clinical interview, the MMPI-2, and the medical and psychiatric records are very consistent. Mrs. Cloud has serious and long-term psychological difficulties that are best described as Bipolar Disorder. This is a severe mood disorder that significantly disrupts an individual's functioning. Substance abuse is one of the most common problems associated with this disorder, and may mask the symptoms of Bipolar Disorder. For this reason, the diagnosis is frequently not detected in early psychiatric contacts, and it is highly likely that Mrs. Cloud experienced symptoms long before she was actually diagnosed.

In addition to her mood disorder, it is important to note that Mrs. Cloud's chaotic and unstable family life and her history of marked abuse, neglect, and trauma have resulted in ego deficits and extreme psychological fragility. These difficulties are consistent with an additional diagnosis of Borderline Personality Disorder. Her interpersonal relationships, ability to modulate and regulate her mood and emotions, and her reality testing are all impaired. These difficulties are reflected not only in the information from the clinical interviews and medical records, but also in the results of the MMPI-2.

In terms of her ability to deal with her emotions, she has major problems with anxiety and depression, and she tends to be high-strung and insecure. She has little self-confidence, is easily overwhelmed, and does not feel capable of solving her problems. She is preoccupied with feeling guilty and unworthy and feels she deserves to be punished for wrongs she has committed. She is regretful and unhappy about her life, feels condemned, and views her physical health as failing. She often feels that life is not worthwhile, and that she is losing control of her thought processes. Throughout much of her life she has contemplated suicide.

Her thinking is characterized by obsessiveness and indecision, and she endorsed a number of items on the MMPI-2 that reflect extreme and bizarre thoughts. During times of stress, she regresses, and her judgment and reality testing deteriorate. She

is vulnerable to delusional or paranoid thinking, and prone to distortion. At these times, it is difficult for her to determine what is real and what is fantasy. She may misrepresent things, not in a conscious and deliberate fashion, but because she is emotionally overwhelmed and falling apart.

In interpersonal relationships, she is quite passive and dependent, which makes her vulnerable to being abused and manipulated by others. She does not speak up for herself, even when others take advantage of her. She avoids confrontation, is easily intimidated, and quite easily hurt. She is fundamentally an introverted and interpersonally avoidant person, who is quite anxious around other people. She is intensely fearful about many things. This hypersensitivity and fearfulness appear to be generalized and debilitating to her in social and work situations. She views the world as a threatening place, sees herself as having been unjustly caught up in the problems of others, and feels quite pessimistic. She quickly resorts to a worst-case scenario approach to deal with events in her life, and it is extremely difficult for her to trust anyone. Given her history of trauma and abuse, her perspective on relationships is understandable.

Summary:

The results of the evaluation indicate that Mrs. Cloud has long-standing and serious psychological difficulties that include Bipolar Disorder, and Borderline Personality Disorder, and a history of Polysubstance Abuse. Moreover, at the time of the evaluation, she was clearly very stressed and conflicted, in spite of having achieved greater stability with her current medications.

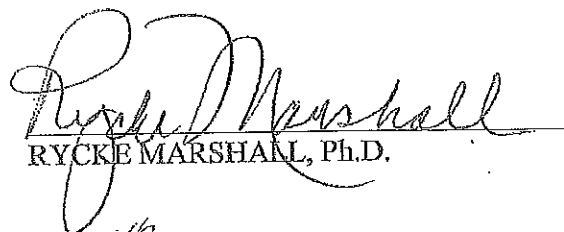
It is my opinion with a reasonable degree of psychological probability that Mrs. Cloud was not competent to testify at the time of Mr. Carpenter's trial. She reported being extremely depressed after the birth of her third child in 1997, and indicated that her depression and anxiety intensified when she began to be questioned by the police. By her description, being pressured and questioned repeatedly was overwhelming and traumatic. Under these circumstances, her functioning deteriorated dramatically.

Her reaction during this time is entirely consistent with her Bipolar Disorder and her Borderline Personality Disorder. Her combination of depression, anxiety, and impaired ability to cope with stress made her very vulnerable to intimidation, suggestion, and manipulation. At the time, she also felt particularly alone and had not yet been placed on an adequate medication regimen. As previously described, when she is emotionally overwhelmed, her reality testing and judgment become quite impaired. She is inclined to become paranoid and to develop delusional thinking, that is, false beliefs. In my opinion she genuinely feared going to jail and losing her children. In the face of these threats and the pressure from Mr. Cloud, the police, and prosecutors, she finally made a statement to escape the pressure.

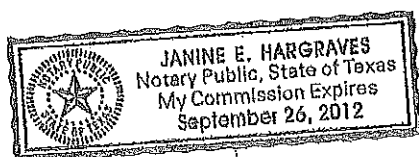
When Mrs. Cloud talks about the events of August 28, 1991, she is able to provide almost no detail, and described feelings of unreality about that day. She has no clear memory of the alleged conversation with Mr. Carpenter about "killing a lady." She reports only that statement and his subsequent request that she wash the blood from his knife and shoes. She is puzzled by the lack of blood on these items as well as the absence of blood on his clothes or person. It is quite possible that in this situation of extreme emotional distress, Mrs. Cloud told police what they wanted to hear rather than what actually happened. The vagueness and lack of detail in her account are consistent with this hypothesis.

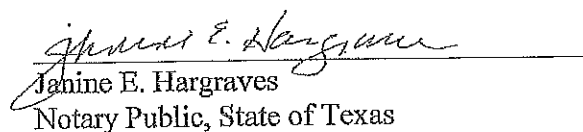
By her own admission, she felt desperate to get out of the situation. It is also typical of her personality to take the path of least resistance. Thus, she likely gave a statement that seemed real to her. This is an example of how her reality testing deteriorates given sufficient stress and can result in delusional thinking. This was not a conscious decision, but was the result of unconscious and overwhelming emotional factors. In her mind, it was as if she had to choose between saving herself or Mr. Carpenter. Moreover, having given a statement, she had to continue to believe it and stand by it, because to do otherwise would produce too much emotional conflict and turmoil. She was also far too fearful to change her statement. She clearly demonstrated confusion and conflict regarding the statement, repeatedly saying she knows what Mr. Carpenter said, but indicating that the scenario somehow does not make sense to her. At this point, she is too wary and mistrustful to change her statement, and she still fears retribution if she were to recant.

It appears that Mrs. Cloud finds herself once again in an untenable situation. It is likely a matter of her being unable to allow herself to know the truth or of being unable to allow herself to tell the truth for fear of retaliation. In either case, her emotional fragility and extreme distress at the time of making her statement and of her testimony indicate she was unable to provide reliable information at the time, and she continues to be unable to do so.


RYCKE MARSHALL, Ph.D.

Sworn to and subscribed before me this 5th day of February 2010 by the person known to me to be Rycke Marshall, Ph.D.




Janine E. Hargraves
Notary Public, State of Texas